

Charter Review & Revision Board

Members: Appointed by:

Stephen Zack, Esq., Chair Mayor Matti Herrera Bower via telephone

Aaron Perry, Vice Chair Commissioner Jerry Libbin

Scott Diffenderfer Commissioner Jorge R. Exposito

Jacqueline Lalonde Commissioner Michael Góngora absent

Rick Kendle Commissioner Edward L. Tobin Alex Fernandez Commissioner Deede Weithorn

Richard "Rick" J. Preira Commissioner Jonah Wolfson absent

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Gary M. Held, First Assistant City Attorney
Donald Papy, Chief Deputy City Attorney
Rafael E. Granado, City Clerk
Liliam Hatfield, OAV, City Clerk's Office

Minutes

Wednesday, November 20, 2013 at 4:30 p.m. Commission Chambers, 3rd Floor, City Hall Email: CharterReview@miamibeachfl.gov

The meeting was called to order by Vice-Chair Perry at 4:35 p.m.

Roll call made; Members Lalonde and Preira are absent, and Chair Zack is attending via telephone. City Clerk Granado announced that there was a quorum.

- 1. Accept Minutes Of The October 21, 2013 Charter Review & Revision Board Meeting. ACTION: Motion made by Member Diffenderfer to approve the minutes; seconded by Member Kendle; 4-0; Absent: Members Lalonde and Preira. Chair Zack is present via telephone and participated, but did not vote.
- 2. Discussion Of Miami Beach United's Proposed Amendment To The Bill Of Rights Enforcement Issue. Mark Needle.
 - a. Ethics In Government; and
 - b. Remedies For Violations

ACTION:

Terry Bienstock gave an update of discussions with the Administration and explained the items presented. They will meet before December 4th on the HOA rights.

Mark Needle spoke.

Motion made by Member Fernandez to approve the proposals from MBU; seconded by Member Diffenderfer.

Member Kendle suggested reviewing the proposed language and keeping the same intention of the language, but to make it less cumbersome, as this is the Bill of Rights. He asked to amend the motion and simplify the language.

Member Fernandez amended his motion approving the intent of the language presented but making it less cumbersome; seconded by Member Diffenderfer; Voice-vote: 4-0; Absent: Members Lalonde and Preira. Chair Zack is present via telephone and participated, but did not vote.

Mark Needle added that they will present draft of the three upcoming items (Association, Enforcement, and Hearings) at the December 4, 2013 CRB meeting.

Gary Held, First Assistant City Attorney, will provide language for form approval at the next meeting.

Vice-Chair Perry thanked the members of MBU and Gary Held for their hard work and efforts.

Rafael E. Granado, City Clerk, clarified that this entire item is to go back on the CRB agenda in December. Rafael E. Granado to handle.

 Discussion Of Pensionable Benefits For Elected Officials – Rick Rivera, Pension Office Director to present.

ACTION: Rick Rivera, Pension Office Director, distributed documents related to pensionable benefits per Ordinance No. 206-3504, Article 5.01, Section B, Paragraph 6, and explained that all elected officials receive a multiplier per year of 4%, and when earnings are calculated, allowances and earnings are used. He mentioned a sample of a W2 compensation, and an additional compensation that goes into a 1099. For Commissioners, the annual pensionable earnings is \$30,000 and for the Mayor \$40,000.

Member Fernandez stated that one of the Board's recommendations is increasing the salaries for the Mayor and Commissioners, and since, in addition to salary, allowances are pensionable, he asked if they could classify the car allowances or any other allowances in a different category that is not pensionable.

Discussion held regarding pensionable benefits and retirement age. Vice-Chair Perry stated that this might be a question to direct to the City Attorney's Office. Discussion continued.

Member Kendle suggested adding the specific items that are not pensionable.

Member Fernandez asked If the word "allowance" can be classified in a different category (a stipend for example), so as not to qualify in the W2 compensation and making it a non-1099 item.

Don Papy, Chief Deputy City Attorney, stated that he cannot comment on taxability, but the issue arises because of the pension ordinance, which determines what is pensionable. The ordinance can always be amended to reflect the wishes of the Board if the City Commission approves the changes. Discussion continued.

Member Fernandez asked if the Charter supersedes the pension ordinance, to which Mr. Papy explained that the Charter is the City's Constitution. Discussion continued regarding increasing salaries and non-pensionable allowances language in the Charter.

Mr. Papy clarified that the pension ordinance can be amended, and he does not believe the Charter addresses any pension matters. The Charter could be amended and he added that he will consult with an expert on the subject.

Chair Zack agreed with Mr. Papy and suggested not wasting time in discussing the item until after an expert opines. The likelihood of changing the entire pension system for the City of Miami Beach to deal with this one issue is highly improbable. He added that if they are concerned about the additional pension amount, they should reduce the amount of the increase to include the additional pension the person is going to receive, but at least they need an expert's legal opinion. Discussion continued.

Member Fernandez asked if the Board members would like to pursue this issue. Member Kendle stated that they have to, as this is a transparency matter and suggested amending the ordinance. Discussion continued.

Vice-Chair Perry recommended adding this item to the next meeting, and suggested that an attorney expert in the subject be invited to present to the Board.

Don Papy, Chief Deputy City Attorney, recommended consulting with the Pension Attorney who deals with these issues in Tallahassee. He will discuss with him and find out options. He reiterated that the pension ordinance can be amended by the City Commission at any time, but his understanding is that this body recommends Charter amendments. **Don Papy to invite Pension Attorney at the December 4, 2013 meeting.**

Chair Zack explained that there are rules and regulations regarding pensions and they cannot be applied in a simple way, they usually have to be applied across the board as opposed to a targeted group of people. He is glad that a Pension Attorney will do the research, and added that whatever the CRB recommends, that someone does the accounting, and if the salary is increased, to find out the total compensation package. If they are concerned about too expensive of a package, they should reduce the amount of salary increase to account for the additional pensionable benefits.

Discussion continued.

Member Kendle thinks they need to determine how they are going to discuss the pension item with the new elected officials.

Handout or Reference Materials:

1. Pensionable Benefits – Elected Officials

4. Discussion Of Section 2.02 – Term – Debora Turner to present

a. Discussion Of The Term Of Office For The Mayor (Currently It Is Two Years).

Reference Material: List Elected Officials – 1990 to Present

ACTION:

Debora Turner, First Assistant City Attorney, explained the items.

Rafael E. Granado, City Clerk, stated that at the last meeting they requested to know if every Mayor since 1990 has been re-elected, and this was affirmative.

Ms. Turner explained the terms of the Mayors since 1990. Discussion held.

Motion made by Scott Diffenderfer to change the Mayor's term to four years. No second offered and discussion continued.

Member Fernandez thinks that it is good to have two-year terms for Mayor. Discussion continued.

Member Kendle suggested asking the newly elected officials how they feel about this issue.

Chair Zack stated that he shares the same concerns and this is a question raised around the country today; however, he is against the idea of bringing this question to the newly elected City Commission.

Vice-Chair Perry recommended tabling the item to the December 4, 2013 CRB meeting.

Member Kendle suggested asking the public for feedback.

Member Fernandez asked if it is the will of the CRB to present this issue to the City Commission and let them decide.

See action with #8.

Member Diffenderfer explained that in the last 23 years, Mayors have been re-elected, and this Board is trying to avoid the negativity of election campaigning.

Motion by Member Fernandez; seconded by Member Diffenderfer to present this item to the new City Commission. Unanimously approved. **Mayor's Terms to be included in the list of items for discussion at the December 11, 2013 Commission Meeting.**

b. Discussion Of Term Limits ACTION:

Debora Turner, First Assistant City Attorney, explained that the word "consecutive" is removed regarding terms for the Mayor and Commissioners, so that the proposed language sets forth two four-year terms for Commissioners and three two-year terms for the Mayor.

Member Fernandez spoke on the possibility of a former elected official, after a hiatus period, to come back to serve if there is a need. Discussion continued regarding term limits. He will ask the City Attorney's Office to draft proposed language setting the limits to serve their term and then take a hiatus out of office before serving again. Ms. Turner explained that the current language allows members to serve again in the future after a hiatus.

Discussion held.

Chair Zack stated that there is a real danger for people to be in government "in exile" awaiting to resume power, and he is opposed to a certain number of terms. When term limits are up, it is time to move on.

Debora Turner, First Assistant City Attorney, stated for the record, that they are removing the word "consecutive" and the Mayor's term would be two (4) year terms.

Motion made by Member Kendle to remove the word "consecutive" and change to two terms of four years for the Mayor; seconded by Member Fernandez. Voice-vote: 4-0; Absent: Members Lalonde and Preira. Chair Zack is present via telephone and participated, but did not vote.

5. Section 2.07 – Vacancies In City Commission – Debora Turner to present ACTION:

Debora Turner, First Assistant City Attorney, summarized the types of vacancies: 1) when there is a vacancy (out of office) due to death or illness; and 2) when someone resigns to run for office irrevocably. The options are as follows:

- 1) If there is a vacancy, and the remaining members of the City Commission refuse to fill the vacancy within thirty days after it occurs, there will be an immediate vacancy, and if there happens to be no General Election within 90 days after expiration of those 30 days, then a Special Election will be called to elect that member.
- 2) In the event of a future vacancy occurring due to an irrevocable written resignation, if a City General or Countywide Election is scheduled to be held within 30 days after the effective date of the written resignation, then that future vacancy shall be filled by that Election. If there will not be a General or Countywide Election scheduled within the 30 days after the effective date of resignation, and the remaining members fail or refuse to fill the vacancy within 30 days after the effective date of resignation, then a Special Election is to be held to fill the vacancy.

Qualifying period provision:

The qualifying period for a Special Election will be the first ten days after they call of the Special Election and any Run-Off Election shall be within 20 days of the Certification of Election Results requiring that Run-Off.

Discussion held. Ms. Turner announced that the proposed language regarding qualifying mirrors language in the County Charter.

Member Fernandez asked if language has been proposed regarding the vacancy of the Mayor. Discussion continued. Ms. Turner explained that the Mayor is a member of the City Commission. Discussion continued.

Motion made by Member Kendle to move forward with the issue of Vacancies in the Office of the Mayor Section 2.07 (for clarity in terms of duration), and bring to future meetings if jurisdiction is extended; seconded by Member Fernandez; Voice-vote: 4-0: Absent: Members Lalonde and Preira; Chair Zack is present via telephone and participated, but did not vote. **Member Kendle to provide additional documents pertaining to this Section.**

Ms. Turner explained that the Vice-Mayor shall perform the duties of Mayor in his/her absence, but it does not specify a duration in that section.

Discussion held.

Member Fernandez suggested creating a subcommittee to work on specific issues and present language discussed to the CRB. Ms. Turner did not recommend the creation of subcommittees, they would be subject to the same Sunshine Law requirements and procedures.

6. Discussion Of Section 6.03 - Qualifying

a. Discussion Of Residency Requirements – Proponent Jacqueline Lalonde. Debora Turner to present.

ACTION:

Debora Turner, First Assistant City Attorney, stated for the record, that research has been done and the City Attorney's Office does not recommend a change in residency requirements. The Attorney General and cases out of Florida address two-year residency requirements for local candidates and found them to be invalid.

Discussion held. Item withdrawn.

Motion made by Member Kendle to reject the proposal; seconded by Member Fernandez; Voice-vote: 4-0; Absent: Members Lalonde and Preira; Chair Zack is present via telephone and participated, but did not vote.

b. Discussion Regarding Adding A Resign To Run Provision For Land Use Board Members Who Become Candidates For Elective Office – Proponent Alex Fernandez. Report by Debora Turner as to Opinions from the Commission on Ethics, if any, on this issue.

ACTION:

Ms. Turner explained that this provision is not recommended for two reasons: 1) the Florida Statute section regarding resign to run laws does not apply to persons serving without salary as members of an appointed board or authority, and because of that, there are Attorney's General opinions that state that a municipality is not authorized to adopt an ordinance which prohibits conduct that is permitted by State Law.

Member Fernandez explained that Ms. Malakoff was a Board of Adjustment member and unknowing whether she win or lose in the election, she resigned from service on

the Board. He thinks that if this proposed language is not legal to place in the Charter, Ms. Malakoff set an excellent example for others to follow that this is the right thing to do.

Discussion was held regarding compensation of board membership, including the value of parking decal, which is about \$600. Ms. Turner clarified that the State Resign to Run law exempts board members who do not recover a salary and City board members do not receive salaries, thus the State Resign to Run laws do not apply to them.

Chair Zack asked if it is an ethical violation of a board member to use their position on one of the boards to generate favoritism or political contributions. Ms. Turner stated that she will look into this further.

Discussion continued.

Chair Zack suggested making a general statement in the Charter that no official of the City, elected, appointed, or employed should use their office for personal benefit. That is the law. Discussion held.

Motion made by Member Fernandez to add in the Bill of Rights language that reads that no appointed or elected member of any board should use their office for personal gain. Chair Zack suggested adding "any elected, appointed official or employee of the City shall not use their position for personal benefit. Friendly amendment accepted. No second offered.

Member Kendle suggested looking into this and refer item to the next meeting with the Citizens' Bill of Rights item. Rafael E. Granado to place on the December 4, 2013 agenda.

Discussion was held regarding dual office holding.

7. Inspector General – Joe Jimenez, Assistant City Manager, to present.
ACTION: Member Kendle suggested bringing this item to the attention of the new City Commission.

8. Discuss Report To City Commission At December 11, 2013 Commission Meeting, Regarding Recommended Charter Amendments

ACTION: Chair Zack will present to the City Commission. See action with Item #4 a)

Discussion held.

Ms. Turner stated that members of the CRB can attend the December 11th Commission Meeting, but reminded them of the Sunshine Law and not to interact with each other at the meeting.

9. Discussion Of Check Registry Website:

https://secure.miamibeachfl.gov/apvendorviewer/vendor.aspx

ACTION:

Member Fernandez asked if it is the intent of the committee to go forward with this. He explained the creation of the TRAC "Transparency, Reliability and Accountability Committee" which was online, and as technology evolves, there is a different expectation to access documents. He wants the CRB to consider.

Discussion held regarding check registry and compatibility issue problems.

Member Kendle suggested that in the remaining time of the Board's existence, there is not enough time to discuss this issue; it is a great idea, but he just does not think they have time. Discussion continued. Item to be placed for discussion on December 2013. **Rafael E. Granado to handle.**

10. Preservation Of Beaches – Proponent Rick Preira

ACTION: Item tabled.

11. Section 1.03 – Power Of City – Proponent Rick Kendle

ACTION: Item tabled.

NEW BUSINESS

The issue of extending Board's terms was discussed.

Debora Turner, First Assistant City Attorney, stated that under City Code Section 2-22, "the term of every board member who is directly appointed by a member of the city commission shall automatically expire upon the latter of: December 31 of the year the appointing city commissioner leaves office or upon the appointment/election of the successor city commission member." The newly elected Commission will have its first meeting on November 25, therefore, the CRB terms automatically expires on December 31, the latter of the two dates.

Member Kendle suggested reaching out to the City Commission and speak to them one on one.

Meeting adjourned at 6:20 p.m.